Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

I. Introduction

Texas Statewide Telephone Cooperative, Inc. (TSTCI) hereby submits these comments in response to the Notice of Proposed Rulemaking (NPRM) and Further Notice of Proposed Rulemaking released by the Federal Communications Commission (Commission or FCC) in the above referenced dockets. These comments are directed to the first round of comments as requested by the Commission. TSTCI is an association representing 39 small rural incumbent telephone companies and cooperatives in Texas that operate under rate-of-return regulation. (See Attachment 1 for a list of TSTCI member companies.) TSTCI member telephone companies and cooperatives serve over one third of the geographic area of Texas encompassing approximately 90,000 square miles. These companies serve an average of 5.5 customers per square mile, with one third of the companies serving less than one customer per square mile. The size of each company's geographic service area varies significantly, ranging in size from serving one county to serving portions of 17 Texas counties, from providing service to one exchange area to providing service to 21 exchanges. The largest TSTCI member company serves close to 30,000 access lines, while 32 members provide service to less than 10,000 access lines, and 27 of these 32 members serve less than 5,000 access lines. The TSTCI member companies are small companies that provide vital telecommunication services to the areas they serve.

In these rural and high-cost areas of Texas, approximately 80 percent of the TSTCI members' customers have access to broadband services at speeds at or above the Commission's broadband definition of 768kbps/200kbps. For this to occur significant capital investments have been made over the past few years in multi-use networks. The rural companies' networks are vital to the telecommunications needs of rural Texans, including households, businesses, schools, healthcare facilities, and local government. Telecommunications providers such as wireless

companies, interexchange carriers, competitive local exchange carriers, and interconnected VoIP providers also benefit from rural companies' networks. For many years the nation's largest telecommunications and cable providers chose not to invest in facilities to provide basic services to the most rural, high-cost, sparsely populated areas such as those served by TSTCI member companies. It is the small rural companies and cooperatives that have provided high quality, affordable services in the rural areas, and all this was made possible through the time-tested regulatory compact under which these companies operate. In many of these rural, high-cost areas it is only the small rural companies that have shown any sustained interest in serving these areas. This is evident by the lack of competitive service offerings, including the lack of wireless coverage, in the rural areas.

TSTCI appreciates the tremendous effort the Commission has undertaken in its role to bring broadband access to all consumers. Broadband can be a great equalizer between the urban and rural areas. However, while the goal of providing broadband access to all is laudable; the Commission must ensure that the methods used to achieve this goal are not detrimental to the long-standing national public policy goals that bring affordable communications services to rural areas comparable to those available in urban areas.

As referenced above, these comments are directed at Section XV of the NPRM where the Commission has requested the industry provide comments on reducing inefficiencies, waste and arbitrage opportunities. TSTCI encourages the Commission to make a final determination on these issues that have plagued the industry for over ten years. The Commission has taken comments on these issues numerous times over the years and has left policy decisions to the courts and states. Many TSTCI member companies have been held hostage by companies refusing to pay access charges for traffic they claim to be IP-based and by using inconsistent court rulings in support of their claims. We hope the Commission will finally determine the

regulatory treatment of VoIP providers and implement policies that put a stop to the arbitrage and fraud that is occurring because the Commission failed to act in the past.

II. Intercarrier Compensation Obligations for VoIP Service Providers

Interconnected VoIP, by the Commission's definition "…permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network". TSTCI believes intercarrier compensation obligations apply to interconnected VoIP traffic when the public switched telephone network (PSTN) is utilized to transport and terminate a call. Absent such a determination, arbitrage incentives will only increase, and put the industry on a path of instability. A Commission determination that interconnected VoIP traffic is not subject to its intercarrier compensation policies will create havoc within the industry as all access providers rush to become interconnected VoIP providers in order to circumvent the Commission's intercarrier compensation policies. More importantly, both intrastate and interstate access revenue streams of the rural companies like the TSTCI member companies will be put at risk, jeopardizing the small companies' cash flow.[1] Furthermore, a decision that classifies interconnected VoIP providers as information service providers without further Commission direction regarding compensation to other providers for use of their networks undermines intercarrier compensation reform and will significantly increase the cost of litigation throughout the nation.

Services provided through IP technologies should not be considered boutique services requiring regulatory protections to incent growth. IP technology and IP-based services are becoming more prevalent in the networks of all service providers as newer technologies are deployed. We do not believe the Commission should base its decision in this proceeding on

[1] Today many TSTCI member companies are working through disputes with Verizon Communications where they are disputing the payment of access charges based on a claim their traffic is an IP-based service.

singling out a "technology" for special treatment. TSTCI contends that a policy of regulatory parity for all service providers that deploy IP technologies particularly when those services provided are a substitutable service to traditional voice services is best. TSTCI questions how a policy that exempts a specific type of service provider using a specific technology can be considered a competitively neutral regulatory policy.

TSTCI agrees that interconnected VoIP providers may offer as part of their bundled service offerings new added features or services that may not be offered by the traditional voice carrier at this time, and as discussed below, many of the added features are applications-based services in addition to the transmission of telecommunications services. However, this alone does not diminish the fact that interconnected VoIP providers are providing services that are equivalent to and that replace traditional voice services. For public policy reasons, all providers of similar services should be treated in a competitively neutral manner regardless of the underlying technology used to provide service. By the Commission's own admission, end user consumers view the services provided by interconnected VoIP providers as substitutes for traditional telephone service.

TSTCI stresses the importance of applying regulatory requirements including compensation policies uniformly to all similarly situated service providers. Otherwise, regulatory policy favors one provider over another, and the favored provider ultimately receives a competitive and cost advantage within the marketplace. The Commission has stated in numerous proceedings that regulatory parity is a fundamental policy objective. In a November 2007 Local Number Portability (LNP) order,[2] the Commission agrees with the regulatory policy

[2] In the Matter of WC Docket No. 07-243, *Telephone Number Requirements for IP-Enabled Service Providers;* WC Docket No. 07-244, *Local Number Portability Porting Interval and Validation Requirements*; WC Docket No. 04-36, *IP-Enabled Services*; CC Docket No. 05-116, *Telephone Number Portability*; CC Docket 99-200, *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility Analysis, Numbering Resource Optimization*. Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking. Released November 8, 2007. Para. 1.

of service provider parity and states: "We believe that these steps we take to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage." The basic principle of regulatory parity that the Commission used as a basis for previous decisions related to interconnected VoIP providers should not be abandoned in this proceeding.

Additionally, by law, regulatory agencies are required to remain consistent in their rulings in order to provide a stable environment for the industry they regulate. Regulatory bodies generally clearly explain the reasons they make major shifts from past policy and recognize the consequences of their actions. Federal courts have found such dramatic inconsistency, without clearly explained reasoning, as violation of law, and voided the action. *See S.E.C. v. Chenery Corp*., 332 U.S. 194, 196; 67 S. Ct. 1575 (1947): "We must know what a decision means before the duty becomes ours to say whether it is right or wrong." *See also, S.E.C. v. Cheney*, 318 U.S. 80, 94, 63 S. Ct. 454 (1943): "The orderly functioning of the process of review requires that the grounds upon which the administrative agency acted by clearly disclosed and adequately sustained." Currently the courts and states are being creative in their interpretations of the regulatory treatment of VoIP providers. By the Commission's lack of clarity, the VoIP providers have a choice of arguments they use to dispute payment of appropriate compensation to terminating carriers. TSTCI requests the Commission assist the industry in resolving these open questions and to close the loop holes used by the interconnected VoIP providers.

TSTCI submits that interconnected VoIP providers are providers of telecommunications services just like traditional voice providers. They provide telecommunications services and should be subject to Title II regulation. The Commission's rules, 47 U.S.C. § 153(43), define telecommunications as "…the transmission, between or among points specified by the user, of

information of the user's choosing, without change in the form or content of the information as sent and received."

This definition must be examined from two aspects to determine if a service provider is providing telecommunications and subsequently telecommunications services. First, if the service provider is providing the transmission of information and, secondly, if the service provider is changing the form of information. It is clear the first part of the definition is met by interconnected VoIP providers since they rely on leased transmission services from a myriad of backbone providers, special access providers and use the local loops of the traditional voice providers to terminate end user calls and the DSL/broadband services provided by the traditional voice providers to originate calls. Interconnected VoIP providers clearly provide transmission services as defined in 47 U.S.C. § 153 (43) as a component of their service offering. The Commission has also concluded in previous orders that interconnected VoIP services are within the jurisdiction granted to the Commission because they are involved with the transmission of voice.[3]

Interconnected VoIP providers clearly make changes in the form of information, but this change is not unlike the way traditional voice providers change the form of transmission where analog voice transmissions are digitized for switching and transmission, then converted back to analog before call delivery. In this sense, the end user's original information (i.e. the message) has not been changed, but the technology used to deliver the information has changed its form in the routing process only to be changed again for call delivery. It is clear that interconnected

[3] *CPNI Order*, 22 FCC Rcd at 6955-56, para. 55; *2006 Interim Contribution Methodology Order*, 21 CC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 ("interconnected VoIP services are covered by the statutory definitions of 'wire communication' and/or 'radio communication' because they involved 'transmission of (voice) by aid of wire, cable, or other like connection …'and/or 'transmission by radio…' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act.").

VoIP providers meet the definition of providing telecommunications and should be regulated accordingly.

As referenced above and fully recognized within the industry, interconnected VoIP providers offer added services to end user consumers. However, these added IP-based services should not automatically disqualify interconnected VoIP providers from being a provider of telecommunications services and should not subject VoIP providers to a lesser degree of regulation than traditional service providers and exempt them from compensating other service providers for use of their networks. The Commission's rule, 47 U.S.C. § 153(46), defines telecommunications service as "…the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*." (Emphasis added.) No one will dispute the fact that interconnected VoIP providers offer services for a fee to the public, and the Commission on many occasions has admitted that services provided by interconnected VoIP providers are a competitive substitute for traditional voice services. The Commission in previous dockets has classified other substitutable services, like wireless services, as telecommunications services and has continued Title II regulation of those providers.

Often the arguments put forth by interconnected VoIP providers purposely complicate and muddle the facts. Interconnected VoIP providers clearly combine application services with telecommunications voice service. Interconnected VoIP providers have convinced the Commission that without special treatment as an information service that avoids regulatory and financial obligations this café "technology" will be harmed. This is simply not the case. Most, if not all, of the traditional voice providers are implementing IP technology in their networks. IP technology will ultimately be found in all communications networks. By classifying IP providers as information service providers and exempting them from intercarrier compensation,

the Commission is providing a significant competitive and cost advantage in the marketplace to any provider that simply declares themselves an IP provider.[4] A decision that continues to exempt interconnected VoIP providers from intercarrier compensation obligations opens the door to continued litigation and jeopardizes intercarrier compensation reform, which is the purpose of this proceeding.

A competitive cost advantage in the marketplace is not warranted, is not competitively neutral and contradicts the Commission's own policy statements in other proceedings such as the IP-Enabled Notice of Proposed Rulemaking (Notice).[5] In that Notice, the Commission recognizes and states that IP service providers use the public switched network in a similar manner for termination and is considering similar compensation obligations for use of other companies' networks. All other providers like ISP backbone providers, special access transport providers, competitive local exchange providers that allow interconnected VoIP providers to lease numbers and transport, receive compensation for use of their networks and services provided; however, lack of clarity on the application of ILEC access charges prevents ILECs from receiving fair compensation like other providers. The competitive marketplace and the technology convergence occurring within the industry provide justification for competitive neutral policies for similar situated service providers.

The Commission appropriately recognizes that inaction regarding the question of whether interconnected VoIP is subject to intercarrier compensation rules has and will continue to create significant arbitrage opportunities, numerous billing disputes, and litigation. TSTCI agrees with the Commission that it should "move forward expeditiously" and apply current intercarrier compensation obligations to interconnected VoIP traffic.

[4] The TSTCI member companies have no means to validate if a service provider is actually using IP technologies.
[5] *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, released March 11, 2004.

TSTCI submits that a VoIP service provider is a provider of telecommunications services and VoIP traffic that utilizes the PSTN should be subject to the same intercarrier compensation charges – intrastate access, interstate access, and reciprocal compensation – the same as traditional local exchange carriers. As the Commission suggests, this approach could and should be adopted immediately and remain during any intercarrier compensation reform transition.

TSTCI acknowledges the need for reform of the current ICC system; however, to continue requiring unilateral obligations on the traditional voice service providers while allowing a special class of carriers free and unfettered access to the PSTN continues to be extremely discriminatory and anti-competitive.

III. Addressing Phantom Traffic: Measures to Ensure Proper Billing and Financial Responsibility

TSTCI commends the Commission's proposals to address the "phantom traffic" industry issues.[6] Many parties and national associations have provided various solutions to the phantom traffic issue over the past five years. Even though industry participants have proposed somewhat differing solutions to the overall problems, the primary problems are created by originating service providers avoiding payment by intentionally altering or stripping billing information, providing incorrect billing information or no information for billing. TSTCI believes the directives provided by the Commission in this NPRM go a long way towards putting service providers on notice that inappropriate behaviors like stripping identifying billing information or not providing billing information at all is no longer acceptable.

[6] TSTCI defines phantom traffic as traffic that terminates on member company's networks that either does not have billing information provided or has incorrect billing information.

TSTCI agrees that the Commission's proposed rule change to require Interconnected VoIP providers to comply with the call signaling rules for both interstate and intrastate calls will go a long way to improve the phantom traffic problem.

While the TSTCI member companies support the efforts of the Commission, TSTCI submits there are still further actions required to eliminate the phantom traffic problem. The Commission's proposed requirement that the originating service providers pass Calling Party Number (CPN) or Charge Number (CN) certainly helps minimize the jurisdictional disputes associated with the application of the proper terminating rates for terminating traffic. However, as the Commission observed at Para. 621, the SS7 signaling network was designed to facilitate call routing and was not designed to provide billing information to the terminating service providers and has limitation when used for billing purposes.

Instead, the terminating service provider is dependent upon its tandem provider to provide industry standard terminating billing records that identify the service provider responsible for paying its termination charges, based upon the trunk group number (TGN) at the tandem. This process was accurately described in footnote 950 of the Commission's NPRM. Unfortunately not all tandem providers have agreed to provide the necessary industry standard terminating billing records to the terminating service provider as they would like the Commission to believe.

Additionally, this defined process assumes that all incoming traffic received by the tandem provider is received on trunk groups that are dedicated to a specific service provider. However, the process becomes more complex when more than one tandem is used to transit calls to a terminating service provider.

For example, on the ubiquitous intraLATA LEC toll networks, in many LATAs, one tandem provider is connected via a common trunk group to another tandem provider, and that

tandem provider may be connected via a common trunk group to another tandem provider, and another and another. In Texas, in some LATAs, five or more tandem providers are interconnected via common trunk groups. For terminating traffic received by a tandem provider via a common trunk group, the tandem provider cannot identify the responsible party by the trunk group number on the common trunk group. Only the initial tandem provider in the LATA that receives the call on a dedicated trunk group (i.e., a trunk group of a connecting LEC or a wireless company), can identify the responsible party for a terminating call that traverses several tandems before reaching the terminating service provider.

Consequently, TSTCI requests that the Commission require the initial tandem provider (i.e., the tandem provider with the dedicated trunk group to the responsible party, including IXCs, other LECs, and CMRS providers) to provide industry standard terminating billing records, without charge, to the terminating service provider and all intermediate companies in the call path within the LATA. This requirement would minimize the amount of terminating traffic where the responsible party is unknown.

Although SS7 signaling has limitations and is not a total solution, TSTCI submits that the Commission can take further action that would facilitate the ability of the terminating service provider to utilize the SS7 signaling information to create its own terminating billing record for non-IXC carried terminating traffic. Here is an example describing the terminating service provider's limitations for generating terminating billing records from the SS7 signaling stream that is populated with only a CPN and/or CN:

> For local and LEC toll terminating calls, the CPN and/or CN does not identify the responsible party when the originating end user's telephone number has been ported from one facilities-based service provider to another. When the calling party number is a ported number, only an originating Location Routing Number (LRN) or Jurisdictional Information Parameter (JIP) passed through SS7 signaling would correctly identify the responsible originating service provider. Currently, these are optional SS7 fields and the

originating service provider has no incentive to provide this SS7 information knowing that it could be used by the terminating service provider to identify the responsible originating service provider.

TSTCI requests that the Commission require all facilities-based LECs with ported-in numbers to include an originating Location Routing Number (LRN) or Jurisdictional Information Parameter (JIP) in the originating SS7 signaling stream, in addition to the CPN and/or CN.

Finally, TSTCI requests that the Commission address the uncompensated interexchange traffic received by terminating ILECs from other CLECs operating within the ubiquitous intraLATA LEC toll network. As Verizon discussed in its Phantom Traffic White Paper[7], many terminating ILECs have been unable to compel CLECs to pay terminating access bills or negotiate billing arrangements. TSTCI supports Verizon's recommendation that the Commission should issue an order, similar to its *T-Mobile Order*,[8] confirming that ILECs may demand negotiation of billing arrangements from CLECs operating within the LATA and that the same intercarrier compensation arrangements that apply today for ILEC-to-ILEC interexchange toll traffic are applicable to CLEC-to-ILEC and ILEC-to-CLEC interexchange toll traffic. TSTCI also recommends that the Commission require the States to establish streamlined arbitration proceedings to address this issue and minimize the burden and expense of litigation on small, rural ILECs.

In summary, TSTCI appreciates the actions outlined by the Commission. We believe these actions along with recommendations made by TSTCI will go a long way to resolving many arbitrage issues facing the industry. As stated above, the Commission's lack of clarity on both of

[7] See Verizon, *Verizon's Proposed Regulatory Action to Address Phantom Traffic* at 14-15 (Verizon Phantom Traffic White Paper), attached to Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-92 (filed Dec. 20, 2005).
[8] See Memorandum Opinion & Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile, et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855 (rel. Feb. 24, 2005)

the issues discussed in these comments are creating regulatory uncertainty and leaving the issues to the courts and states to create solutions that are inconsistent. TSTCI stresses that a resolution to the arbitrage, fraud and abuse is long over due.

Respectfully submitted,

Texas Statewide Telephone Cooperative, Inc.
By: Cammie Hughes
Authorized Representative
April 1, 2011

Attachment 1

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazoria Telephone Company
Brazos Telecommunications, Inc.
Brazos Telephone Cooperative, Inc.
Cameron Telephone Company
Cap Rock Telephone Cooperative, Inc.
Central Texas Telephone Cooperative, Inc.
Coleman County Telephone Cooperative, Inc.
Colorado Valley Telephone Cooperative, Inc.
Community Telephone Company, Inc.
Cumby Telephone Cooperative, Inc.
Dell Telephone Cooperative, Inc.
E.N.M.R. Telephone Cooperative, Inc.
Eastex Telephone Cooperative, Inc.
Electra Telephone Company
Etex Telephone Cooperative, Inc.
Five Area Telephone Cooperative, Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Cooperative, Inc.
Nortex Communications, Inc.
Panhandle Telephone Cooperative, Inc.
Peoples Telephone Cooperative, Inc.
Poka Lambro Telephone Cooperative, Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Cooperative, Inc.
South Plains Telephone Cooperative, Inc.
Tatum Telephone Company
Taylor Telephone Cooperative, Inc.
Wes-Tex Telephone Cooperative, Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Cooperative, Inc.
XIT Rural Telephone Cooperative, Inc.